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§§ 1745-1757; Dec. Dig. § 821.* 1 Va.-W. Va. Enc. Dig. 383; 14 Va.-W. Va. Enc. Dig. 51.]

4. Action (§ 50*)—Misjoinder—Joint and Several Torts.—It is improper to join in one declaration counts alleging joint torts by two defendants with counts alleging several torts by each of them.

[Ed. Note.—For other cases, see Action, Cent. Dig. §§ 511-547; Dec. Dig. § 50.* 1 Va.-W. Va. Enc. Dig. 139; 14 Va.-W. Va. Enc. Dig. 11.]

5. Appeal and Error (§ 1178*)—Disposition of the Case—Remand—Ruling on Demurrer.—Where the trial court erred in overruling the demurrer to the amended declaration on the ground of misjoinder of causes of action, the Supreme Court will not sustain the demurrer and enter judgment for defendant, but will remand, with instructions to give plaintiff leave to withdraw his joinder in the demurrer and amend his declaration.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4604-4620; Dec. Dig. § 1178.* 4 Va.-W. Va. Enc. Dig. 546; 14 Va.-W. Va. Enc. Dig. 333; 15 Va.-W. Va. Enc. Dig. 283.]

Error to Circuit Court, Culpeper County.

Action by George E. Tanner against the Culpeper Construction Company and another. Judgment for the defendants, and plaintiff brings error. Reversed and remanded.

Gibson & Nottingham, of Culpeper, for plaintiff in error.

Waite, Perry & Jeffries, Grimsley & Miller, and *E. E. Johnson*, all of Culpeper, for defendants in error.

BOARD OF SUP'RS OF HANOVER COUNTY *v.* VAUGHAN,
County Treasurer.

Jan. 12, 1915.

[83 S. E. 1056.]

1. Limitation of Actions (§ 102*)—"Trustee of Express Trust"—Who Are.—While a county treasurer is a trustee of an express trust, and can not set up a plea of the statute of limitations as to moneys in his hands as treasurer, he is not a trustee of an express trust with respect to money received by him as commissions, and may defeat an action to recover such money by plea of the three-year statute of limitations.

[Ed. Note.—For other cases, see Limitation of Actions, Cent. Dig. §§ 494-505; Dec. Dig. § 102.*]

2. Counties (§ 70½*)—County Officers—Treasurer.—Code 1904, §§ 613, 614, relating to the commissions of the county treasurer, was amended by Act March 13, 1908 (Acts 1908, c. 244). Act March 23,

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

1912 (Acts 1912, c. 348), construed the statutes as amended, and further prescribed how the treasurer's commissions should be determined. The commissions received by the county treasurer for the years 1909 and 1910 were less than the amount to which he was entitled under the Code as construed by the subsequent act, although some of the commissions received were unauthorized. Held that, as the act of 1912 applied, the county could not recover back the unauthorized commissions, and at the same time defeat the treasurer's claim for additional commissions; hence the fact that the treasurer was entitled to greater commissions than he received was a good defense of action by the county.

[Ed. Note.—For other cases, see Counties, Cent. Dig. §§ 104-113, 115-117; Dec. Dig. § 70½.*]

Appeal from Circuit Court, Hanover County.

Bill by the Board of Supervisors of Hanover County against H. Guy Vaughan, County Treasurer. From a decree for defendant, complainant appeals. Affirmed.

Geo. P. Haw, of Richmond, for appellant.

Hill Carter, of Richmond, for appellee.

NORFOLK & W. RY. CO. et al. v. PERDUE.

Jan. 12, 1915.

[83 S. E. 1058.]

1. Master and Servant (§ 302*)—Misconduct of Servant—Liability of Master to Third Persons.—Where a gatekeeper in a railroad station aided a special officer in unlawfully arresting one entering the station to board a train, the railroad company was liable for the act of the gatekeeper, though not for the act of the officer.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 1217-1221, 1225, 1229; Dec. Dig. § 302.* 9 Va.-W. Va. Enc. Dig. 728; 15 Va.-W. Va. Enc. Dig. 662.]

2. Appeal and Error (§ 1064*)—Harmless Error—Errors Not Affecting Result.—Where the court charged for defendant on the case as originally presented, but plaintiff by leave amended his declaration, and thereafter established a case against defendant under the amendment, any error prior to the amendment was immaterial.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4219, 4221-4224; Dec. Dig. § 1064.* 1 Va.-W. Va. Enc. Dig. 601; 14 Va.-W. Va. Enc. Dig. 96; 15 Va.-W. Va. Enc. Dig. 70.]

3. Dismissal and Nonsuit (§ 26*)—Tort—Nonsuit as to One Defendant—Judgment.—Where, in an action against a railroad company and

* For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.